Filed 8/3/10 Huddleston v. Superior Court CA2/8

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION EIGHT

SIDNEY HUDDLESTON, Petitioner, v. THE SUPERIOR COURT OF LOS ANGELES COUNTY, Respondent; THE PEOPLE, Real Party in Interest.	No. B216919 (Super. Ct. No. TA 097235)

ORIGINAL PROCEEDING; petition for writ of mandate. Arthur M. Lew, Judge. Granted.

William Hassler for Petitioner.

No appearance for Respondent.

Edmund G. Brown, Jr., Attorney General, and John Yang, Deputy Attorney General, for Real Party in Interest.

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Sidney Huddleston is appealing the superior court order that denied his motion for the return of property seized by the police. Appointed counsel has filed a brief pursuant to *People v. Wende* (1979) 25 Cal.3d 436, but has since withdrawn his *Wende* brief. Appellant was advised that he could file his own brief, and has not done so.

On February 11, 2010, we posed two questions to counsel. (1) Is there an appealable order in this case? (2) Did the trial court err when it declined to rule on the question of the ownership of the car? Both sides answered the first question with a no. Appellant answered the second question by stating that the court erred in refusing to rule on the motion. Respondent disagrees, contending that the court denied the motion because appellant did not prove that he was the owner of the property in question.

PROCEDURAL HISTORY

On May 12, 2008, appellant pled nolo contendere to one of two charged counts of forgery.

On May 27, 2008, appellant was placed on three years of probation, with conditions that included 180 days in county jail.

On March 3, 2009, probation was revoked and appellant was remanded into custody. The probation officer's report stated: "On 2/25/2009, the defendant's 'good friend' and roommate was shot to death inside her home, in the city of Burbank. The follow-up investigation revealed that the defendant, the victim, and the victim's boyfriend all live together at the residence and have a close relationship. The defendant displayed an intimate knowledge of the murder victim's life. The victim's boyfriend identified the victim's killer after a lengthy interview. During the defendant's interview, he intentionally lied to officers about sending a text message a day or two before the murder. The text message read that he needed to obtain a 'burner' (gun)."

On March 18, 2009, appellant was released and his probation was continued on the same terms and conditions as before. According to statements by defense counsel at a later proceeding, probation was reinstated after the probation department confirmed appellant's statement that he had been unable to get an appointment because the probation department's orientation unit was understaffed.

On April 1, 2009, appellant filed the motion that is the subject of this appeal. The motion was prepared by the Office of the Public Defender. The motion sought return of "Mr. Huddleston's 2000 Jaguar automobile, his keys, his cell phone, his briefcase, and the contents of it, and clients['] files relating to his real estate business . . . ."

At proceedings on April 15, 2009, the prosecutor said the police were willing to return any property that clearly belonged to appellant, but the police would not return the Jaguar without proof that it was registered to appellant or that he was lawfully in possession of it. A police detective testified that appellant drove up in the Jaguar "within five minutes of the shooting at the scene, and he along with the witness to the shooting were taken to the station." According to the detective, other detectives "ran" the Jaguar's registration, and it was registered to the murder victim. The Jaguar was searched pursuant to a warrant, but no evidence related to the murder was found. Because the investigation was ongoing, the detective declined to state whether there were charges pending against appellant.

Subsequent proceedings[1] showed that, the car was actually registered to "E.T.B. Financial," a company that appellant was in the process of starting. A witness named Javier Lopez, who lacked personal identification, testified that appellant bought the car from him for $5,000 cash in October 2008. Lopez wrote down "E.T.B. Financial" as the name of the purchaser because appellant asked him to do that.

Appellant testified that he purchased the car as Lopez described. He had Lopez write down the name of E.T.B. Financial to give the new company "prestige." On the day before he testified, appellant obtained a seller's permit for E.T.B. Financial from the State Board of Equalization. He had applied two months earlier for a business license for E.T.B. Financial but he lacked the funds to pay for the license. The company was to be a wholesale business selling cellular accessories. In the final hearing, discussed below, the deputy district attorney who opposed appellant's motion, stated that the vehicle was registered to E.T.B. Financial.

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[1] There were four hearings between April 15 and May 28, 2009.

THE FINAL RULING

At the outset of the hearing, the court noted that the police department was willing to return the car to "anybody who could show proof of ownership." The court went on to state: "So at this time I'll just make an order that the Burbank Police Department will return the property to its rightful owner, and it's up to them to determine who the rightful owner is." Appellant's counsel stated that the court should determine "whether or not its gets returned back to Mr. Huddleston." The court disagreed and stated: "I certainly am not going to make a finding that he's the owner of the property. It's not my duty. I'm just here to order it returned to its rightful owner."

Even though appellant's counsel again stated that the court should rule on whether appellant was entitled to the property, the court replied, "[n]o, I can't do that."

Present in court during this final hearing was a representative of the car dealer who had sold the vehicle in question to Lopez. After the court's last remark, appellant's counsel stated that he wanted to ask this person when she could obtain the documents that would show that the car was sold to Lopez. The trial court then stated: "I don't intend to take further testimony on this. I think the court's position is clear. And you've requested it. I've denied it. That's on the record. [¶] . . . [¶] . . . And that's the end of the motion as far as I'm concerned. [¶] And if you want to take a writ, you're certainly welcomed [*sic*] to."

On June 5, 2009, appellant filed a notice of appeal from the denial of his motion for return of property.

DISCUSSION

1. The Authority for the Motion

> "Persons may not be deprived of property without due process of law, nor may the Legislature expropriate private property by mere legislative enactment. (Cal. Const., art I, § 15; *People v. Beck* (1994) 25 Cal.App.4th 1095.) 'The right to regain possession of one's property is a substantial right which may not be dependent upon the whim and caprice of a court. . . .' [Citation.] Continued official retention of legal property with no further criminal action pending violates the owner's due process rights. [Citation.] [¶] A criminal defendant may move for return of property before trial on the ground the seizure was unreasonable. [Citation.] A defendant may also bring a nonstatutory motion for return of property seized by warrant or incident to arrest which was not introduced into evidence but remained in possession of

the seizing officer. (*Gershenhorn v. Superior Court* (1964) 227 Cal.App.2d 361, 364-365.)" (*People v. Lamonte* (1997) 53 Cal.App.4th 544, 549.)

In the letter briefs filed in response to our inquiries, both parties treat the motion as a "nonstatutory" motion for the return of property that is in the custody of the officer who seized the property. Because appellant was not contesting a search, it appears that appellant's motion was a nonstatutory motion.

2. The Character of the Proceedings Before Us

"Although the trial court has the inherent authority to entertain the motion for return of property seized under color of law, the right to appeal is wholly statutory and a judgment or order is not appealable unless it is expressly made so by statute. . . . [¶] A motion for return of property is a separate procedure from the criminal trial and is not reviewable on an appeal from an ultimate judgment of conviction. . . . [¶] The proper avenue of redress is through a petition for writ of mandate, not an appeal." (*People v. Hopkins* (2009) 171 Cal.App.4th 305, 308, citations omitted.)

As respondent acknowledges, an appellate court can treat a purported appeal from a nonappealable order as a petition for a writ of mandate in the event there are compelling circumstances that justify such a course of action. (*H.D. Arnaiz, Ltd. v. County of San Joaquin* (2002) 96 Cal.App.4th 1357, 1366-1367.) We explain in the next part why we decide to treat the purported appeal as a petition for a writ of mandate.

3. Appellant Was Entitled to a Ruling on the Merits of His Motion

Appellant's motion requested the return of what he asserted was his property. This was and is an assertion of a fundamental and constitutionally protected right, as the court explained in *People v. Lamonte*.

"The judicial power of this State is vested in the Supreme Court, courts of appeal, and superior courts . . . ." (Cal. Const., art. VI, § 1.) "Judicial power generally is the power to adjudicate upon the legal rights of persons or property . . . ." (*People v. Bird* (1931) 212 Cal. 632, 640.) Appellant asserted that he had the legal right to possess the property in question. The trial court, which is constitutionally vested with the exercise of judicial power, was required to adjudicate, i.e., decide, whether appellant has the right to possess the property.

It is impermissible to delegate this judicial decision to the Burbank police department.

We do not agree with respondent that the trial court denied appellant's motion "due to his inability to prove possessory and/or ownership rights over the property in question." The court cut off counsel's attempt to present additional evidence, stating that the court did not intend to take further testimony. The court denied the motion not because of a failure of proof but because the court was not going to rule, one way or another, on the question whether appellant was the owner of the property in question.

We understand the court may have been frustrated at having spent such an amount of time (four hearings) on the matter, particularly since the police did not object to returning the car to its rightful owner. Nonetheless, the court's refusal to exercise its judicial power, and the delegation of that power to a nonjudicial body, is in our opinion a sufficiently serious error in the administration of justice that we should treat the purported appeal as a petition for a writ of mandate. Accordingly, we grant the petition for a writ of mandate and remand the case to the trial court for further proceedings that are consistent with this opinion.

DISPOSITION

The purported appeal is denominated a petition for a writ of mandate. The petition is granted and the case is remanded with directions to conduct further proceedings that are consistent with this opinion.

FLIER, J.

We concur:

RUBIN, Acting P. J.

GRIMES, J.